IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.456 OF 2006

Union of India ...Petitioners

v/s

M/s Saloja and Sons ...Respondents

Mr Suresh Kumar for Petitioners.

Ms Shilpa Kapil for Respondents.

CORAM : D.K. DESHMUKH J.

DATE : 18TH DECEMBER 2006.

P.C. :-

1. Heard finally by consent of parties. By this petition, the petitioners challenge the award made against claim Nos.6 and 7 which read as under :-

"Claim No.6 : Interest 24 %

Amount claimed : Not specified.

Amount awarded : Rs.19,071/-

6. The Sole Arbitrator observed that the claimant have sent the legal notice to the General Manager, Central Railway, through their advocate on 31.06.2001, raising various disputes and requesting them to clear their pending amounts (C-19). The tribunal therefore, takes date of this note i.e. 31.06.2001 as the date of beginning of dispute and award and simple interest of 10 % per annum from this date upto the date of passing the final bill and security deposit. Final bill of Rs.29,136/- paid to claimant on 14.01.2005.

. The interest amount @ 10 % simple interest per annum comes to Rs.10,197.60 for

42 months. The security deposit of Rs.24,200/- paid to claimant on 02.03.2005. The interest amount @ 10 % simple interest per annum comes to Rs.8,873.30 for 44 months. Total amount of Rs.19,071/- is awarded for this claim.

Claim No.7 : Cost

Amount Claimed : Rs.50,000/-

Amount awarded : Rs.10,000/-

7. The Claimant has claimed arbitration fees due to the court cases etc. The claimant has approached the respondent for settling the claims. Finally the claimant had to approach the court for fixing the arbitration for settlement of claim. Therefore, an amount of Rs.10,000/- awarded for this claim."

. According to the petitioners, in the rejoinder filed before the learned Arbitrator, the petitioners had claimed that neither interest nor cost should be awarded in terms of the provisions contained in the contract viz. the General Conditions of Contract. The petitioners rely on General Conditions of Contract viz. 64.5 and 64.6 which read as under :-

"64.5 Where the arbitral award is for the payment of money, no interest shall be payable on whole or any part of the money for any period till the date on which the award is made.

64.6 The cost of arbitration shall be borne by the respective parties. The cost shall inter alia include fee of arbitrator(s) as per the rates fixed by the Railway Administration from time to time."

. It is clear that the learned Arbitrator while awarding interest and cost has not considered these two conditions. The learned counsel appearing for respondents, relying on my judgment in arbitration petition No.427 of 2004 (Dy. Chief Engineer, Western Railway v/s M/s R.P. Shah) dated 6th September 2005, submitted that in that judgment, it is held that because condition No.64.5 of the General Conditions of Contract was not relied on by the petitioners, the learned Arbitrator was justified in not considering it. In the present case, in the rejoinder filed on behalf of the petitioners, General Conditions of Contract have been specifically referred to. It appears that in the case of Dy. Chief Engineer, Western Railway, referred above, even there was no reference to the General Conditions of

Contract. As the General Conditions of Contract were referred to, it was for the learned Arbitrator to enquire as to which conditions of General Conditions of Contract are applicable. It is clear that the award made is contrary to the condition Nos.64.5 and 64.6 and therefore, it is liable to be dismissed. It is accordingly dismissed to that extent. Petition is disposed off.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.